IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3032 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRISHKUMAR NARMADASHANKER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3032 of 2001

MR GM AMIN for Petitioner No. 1-4

MR MA PATEL, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Rule. Service of rule waived by Mr. M.A. Patel, Ld. AGP for the respondents.

2. By this petition under Article 226 of the Constitution of India the petitioners have prayed for direction to the respondents to declare the award and to pay the compensation to the petitioners of their land bearing survey nos. 86, 86/1, 86/2/11, 86/2/12, 86/2/10, and 86/2/13 situated in the sim of village Khalsadiya, Taluka Dhandhuka, District Ahmedabad, with statutory interest in view of the fact that the lands are already taken away by the Government for the Forest Department in order to construct flood protection wall on the river Nilka without affording any compensation. The lands of the petitioners, possession of which had already been taken, had been admeasured by the District Inspector of Land Records and map showing the situation of the said flood protection wall and actual area taken over by the respondents are annexed with the petition.

3. The petitioners thereafter approached the Gram Panchayat and Gram Panchayat has also issued certificate and the Panchnama has been prepared showing taking over possession of the petitioners' lands as stated above. The petitioners have thereafter approached to the respondent authorities on various occasions and despite that, no amount of compensation has been paid. Not only that, it was also stated that no acquisition proceedings thus far have been initiated. It is in this context the petitioners are constrained to knock the doors of justice by filing this petition under Article 226 of the Constitution of India.

4. After having heard the learned advocate for the petitioners and the Ld. AGP appearing for the respondents and perused the documentary evidence produced on the record, we are of the opinion that the petitioners have, successfully, made out a case for the invocation of the powers of this Court under Article 226 of the Constitution of India. It is very surprising to find from the record of the present case that without any lawful initiation of proceedings, even under the Land Acquisition Act (Act), the aforesaid parcels of agricultural lands have been taken away by the respondent - authorities.

5. One of the promises of the Constitution of India is that no person shall be deprived of his property without due process of law. Unfortunately, in the

present case, the agricultural properties of the petitioners have been taken away by the respondent authorities, may be for the public purpose, but without any authority of law or without any initiation of legal permissible process and that too without making any payment of compensation. It is in this context, we are satisfied that omission or commission, indifference or apathy on the part of the respondent, undoubtedly, would warrant the direction of this Court invoking the powers under Article 226 of the Constitution of India.

6. In the light of the facts and circumstances of the case narrated hereinbefore and the celebrated proposition of law, the respondent - authorities are directed to take urgent actions in order to see that the just and reasonable amount of compensation as per the market price is expeditiously paid. It will be open for the respondent authorities to opt any one of the three alternatives for the aforesaid purpose :-

I. To initiate acquisition proceedings in accordance with law, if not so far commenced for the purpose of acquisition, since the possession of the land of the petitioners has already been taken over without any payment of compensation, or

II. In case further proceedings have been initiated so far, it will be also open for the respondent - authorities to consider and invoke the benefit of provisions of section 48 of the Act, or

III. to pay compensation as per the market price with all benefits as if it had been acquired.

The respondent authorities shall decide, at the time of opting any one of the alternatives enumerated hereinabove, as early as possible since possession has already been taken over long before from the petitioners, but not later than six months from today.

With these observations and aforesaid discussions, the petition is allowed. Rule made absolute to the aforesaid extent with full costs.

[J.N. Bhatt, J.]

[Akshay H. Mehta, J.]

* Pansala.